IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 5414 of 2003

Between:

1. Kammari Hymavathi

W/o Late K.Krishnamachari @ Krishnaiah

Aged about 36 years,

R/o Kothur Village & Mandal,

Mahaboobnagar District, A.P.

2. Kammari Radhika

D/o Late Krishnamachari @ Krishnaiah

Aged about 16 years,

R/o Kothur village & Mandal,

Mahaboobnagar district, A.P.

3. Kammari Prakash

D/o Late Krishnamachari @ Krishnaiah

Aged about 14 years,

R/o Kothur village & Mandal,

Mahaboobnagar district, A.P.

4. Kammari Waramma,

D/o Late Krishnamachari @ Krishnaiah

Aged about 12 years,

R/o Kothur village & Mandal,

Mahaboobnagar district, A.P.

5. Kammari Swathi

D/o Late K.Krishnamachari @ Krishnaiah

Aged about 10 years,

R/o Kothur village & Mandal,

Mahaboobnagar district, A.P.

..... PETITIONER

AND

1. The Chairman Cum Managing Director,

C.P.D.C.L. (Central Power Distribution Company Limited)
Singareni Bhavan, Nampally, Hyderabad. A.P.

2. The Director (Operations)

C.P.D.C.L. (Central Power Distribution Company Limited)

Singareni Bhavan, Nampally, Hyderabad. A.P.

3. The Superintending Engineer (Operation)

C.P.D.C.L. (Central Power Distribution Company Limited)

Mahaboobnagar, Mahaboobnagar District, A.P.

4. Sri Kothapalli Subbarayudu,

Minister for Electricity Power&Supply,

Secretariat Building, Secretariat, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondents in not paying the exgratia amount through Lr.No.DS(Per)/AS(Per)/929/C1/2001, dt:02-09-2002 to the petitioner as exgratia since the petitioner's husband died due to electrocution at the pole while he was engaged by the respondents is bad and illegal at violation of article 14 and 21 of Constitution of India and consequently direct the respondents to pay Rs.1,80,000/- with interest from the date of death to till the realization at the rate of 24% p.a.

Counsel for the Petitioners: MR.A.VENKATASWAMY

Counsel for the Respondents: MR.SAMINENI KISHORE

The Court made the following:

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 5414 of 2003

O R D E R:

The writ petition is filed seeking to declare the action of the respondents in not paying the ex gratia amount through Lr.No.DS(Per)/AS(Per)/929/C1/2001 dated 2.9.2002 to the petitioners consequent on the death of the 1st petitioner due to electrocution as illegal and arbitrary.

The brief facts that are necessary for the disposal of this case are as follows:

The husband of the petitioner No.1 was working as a casual labour in the respondent-corporation since 1979. He was acquainted with electrical works and repairs. While so, at the dictation of Line Inspector and the Lineman, he climbed the electric pole after switching down the electric supply and repaired the power supply at Thimmapur Sub-Station. It is stated that as the Line Inspector and the Lineman recklessly put on the power supply to the pole, the husband of the 1st petitioner got electrocuted and died on 1.10.2001. He was the only breadwinner of the family. The petitioners made representations to the respondents seeking compensation but to no avail. Afterwards, the respondents unilaterally paid a meager amount of Rs.20,000/- though the 4th respondent announced Rs.2.00 lakhs as compensation for the electrocution of the husband of the petitioner No.1. Hence the present writ petition.

The respondents filed counter affidavit stating that the petitioner was never engaged as casual labour and denying that the Line Inspector and the Lineman have recklessly put on the power supply to the pole due to which the husband of petitioner No.1 electrocuted. He expired on 1.10.2001 due to non-departmental accident while replacing the broken poles at Kothur village. Apart from paying an amount of Rs.20,000/- as compensation, petitioner No.1 was also offered employment on contract basis as Sweeper under a contractor by name Malleshwar but she refused to work under him and has demanded permanent job. The compensation as demanded by her cannot be paid as the rules do not permit to do so. Further, as the husband of the petitioner No.1 was not a permanent

employee, providing of job on compassionate grounds cannot arise. Hence it is prayed that the writ petition may be dismissed.

Learned counsel for the petitioner contended that there is a prima facie evidence of negligence on the part of the employees of the respondent-Corporation and the death has not taken place on account of negligence on the part of the deceased and the deceased was the only bread winner of the family and all the other family members were completely depending upon the earnings of the deceased and depending upon the size of the family, the nature of earnings, the consolidated amount of Rs.1,80,000/- will be the appropriate amount. Therefore, he prays to allow the writ petition.

On the other hand it is contended by the learned counsel for the respondents that the writ petition was not the proper remedy as the facts stated by the petitioner were disputed by the respondent-corporation and the dispute between the parties could not be decided without evidence being led by both the parties and hence he prays to dismiss the writ petition.

It is specifically stated in the affidavit that the husband of the 1st petitioner was working as casual labour in the respondent-organisation right from the year 1979. It is specifically also alleged that the Line Inspector and Lineman of the respondent-corporation have recklessly put on the power supply to the pole as a result of which the husband of the 1st petitioner got electrocuted on 1.10.2001.

In the counter the respondents denied the engagement of the petitioner as casual labour but admitted that the responsibility to supply electric energy in the particular locality was statutorily conferred upon the respondents and the energy if so transmitted causes injury or death of a human being, the deceased is being compensated financially as per the rules in force. It is also admitted that the 1st petitioner was paid an amount of Rs.20,000/- as ex gratia towards compensation. The police registered a case under Section 304-A IPC on the report given by the 1st petitioner. The dead body

was subjected to post mortem examination. The cause of death to the best of knowledge and believe of the doctor who conducted post mortem examination was due to cardiac respiratory arrest due to electric shock. Even the cause of death of the deceased is not in dispute.

Now the question remains is whether there is any negligence on the part of the respondents in causing the death of the deceased. There cannot be any dispute that under public law compensation can be granted when there is a violation or infringement of fundamental right guaranteed under Article 21 of the Constitution of India. However, this court could not resolve the disputed questions of fact in awarding compensation and also when tortuous liability is clearly denied.

Learned counsel for the petitioner placed strong reliance on a decision of this curt in **A.V. janaki Amma and others v. Union of India and others** wherein it is held:

> "It is no more res integra that for violation of fundamental right guaranteed under Article 21 of the Constitution of India, public authorities, officials and State are liable to pay compensation. In a given case, it is always competent to public law courts in India exercising powers under Articles 32, 136 and 226 of the Constitution of India to award compensation in public law. Such compensation is only by way of applying balm to the injury suffered by the person or the victim. Such remedy is in addition to the remedy in tort in private law. it is also well settled that depending on the gravity of carelessness and negligence, the Court exercising public law powers can always award exemplary costs by way of compensation. Even in such an event, such public law redressal of the grievance is not by way of supplementing, but by way of supplanting leaving the persons or victims to avail remedies in private law".

He also relied upon a decision in **Madhya Pradesh Electricity Board v. Shail Kumari** wherein the apex court held:

> "It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury to or death of a human being who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the look out of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps".

The learned counsel for the petitioner relied upon yet another decision in **Shakuntala Sharma v. State of U.P.** wherein it is held:

> "There are catena of cases, which we need not cite, where the Supreme Court as well as this court, in exceptional circumstances had awarded compensation to the victims, who suffered on account of the act or omission of the State".

He also relied upon a decision in **Sarla Sahu v. State of Orissa** wherein it is held:

> "Law is no more res integra that Article 226 of the Constitution does not cast any limitation on the powers of the High Court in exercise of jurisdiction there under though such power has to be sparingly exercised to meet the ends of justice. The efforts of the court while exercising the powers under Article 226 of the Constitution should not be one for finding means to pull down the shutters of adjudicatory jurisdiction before a party who seeks justice, but to see whether it is possible to entertain his grievance if it is genuine".

From the above decisions it is clear that when there is tortuous liability or prima facie negligence on the part of the respondents, the High Court can grant non-pecuniary damages due to the death of a person due to negligence.

On the other hand, learned standing counsel appearing for the respondents relied upon a decision in **Chairman, Grid Corporation of Orissa Ltd. v. Sukamani Das** wherein it is held:

> "It is settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy".

He relied upon another decision in **Sarla Sahu v. State of Orissa** wherein it is held:

> "However, in the present case a number of documents were filed before us. Most of the documents are uncontroverted and are public documents. Perusal of the

> said documents coupled with the interim payments sanctioned and paid by the Government as well as Red Cross for the treatment of the victim, prima facie makes out a case of death due to negligence amounting to tortuous act. It also prima facie appears that the provisions enshrined under Article 21 of the Constitution have been grossly infringed in the present case. A cumulative assessment of various factors and in the light of the ratio laid down by the Supreme Court in the decision in Tamil Nadu Electricity Board v. Sumathi AIR 2000 SC 1603, in order to provide immediate help to the bereaved family who definitely belong to the downtrodden class of the society, we think it appropriate to direct the opposite party Grid Corporation to make an ex gratia payment of Rs.50,000 with 6 per cent interest from the date of accident till the date of payment towards interim compensation to the legal heirs of victim Madha Sahu and we direct accordingly".

Even the decisions relied upon by the respondents would clearly go to show that when there is negligence on the part of the respondents, then there is no bar in awarding compensation under Article 226 especially when there is prima facie negligence on the part of the respondents. It is also clear that when there are disputed questions of fact involved, and when it was not possible to exercise the quantum of damages caused and compensation payable to the petitioners in exercise of extraordinary jurisdiction that the dispute has to be resolved in a competent forum. Even in **Sarla Sahu's** case when the prima facie case that the death took place due to negligence amounting to tortuous act, then there is an infringement of Article 21 of the Constitution. In **Chairman, Grid Corporation of Orissa Limited** case also it is held that in case of negligence on the part of the respondents the compensation can be granted. Though it is stated by the respondent-corporation that there was no negligence, it is admitted that the deceased died due to non-

departmental accident while replacing the broken poles at Kothur village. The letter issued by the Divisional Engineer (Operation) dated 21.6.1998 would indicate that the petitioner was engaged firstly as a casual labour on 16.7.1978 and from that date onwards he has been continuously engaged. Even the documents issued by the Assistant Engineer for the years 1978 to 1981 would indicate that the husband of the 1st petitioner worked for more than 331 days. The other important document filed by the petitioner is the preliminary report of accident submitted by the Assistant Divisional Engineer, Electrical Operation, APCPDCL dated 2.10.2001 wherein the cause of the incident was stated as follows:

> "Two pin bindings removed and while opening third pin binding he got electrical shock, may be due to induction or back feeding as the concerned feeder was under line clear".

It is not specifically denied in the counter that the deceased unauthorisedly climbed on to the pole and not discharging the duties for and in connection with the departmental duties. When he has been admittedly working as a non-departmental electrician, he can climb the poles as instructed by the Lineman or the Line Inspector. As seen from the preliminary accident report, when he first removed the two pin bindings, there was no power supply. That means, the supply must have been stopped at the relevant electric pole. While he was opening the third pin binding, he got electrocuted. That means, while the petitioner was attending the electrical work, the employees of the respondent-corporation must have been switched on the electric supply. This resulted in electrocution of the husband of the 1st petitioner. The employees of the respondent-corporation must have switched on the electric supply without taking proper care and caution. The care required to be taken in those circumstances is that no person was attending to the electric work on the pole. The employees of the respondent must ensure that the person who climbed on the pole has to got down and thereafter only the power

supply has to be switched on. This precaution has not been taken in all probability. That is the reason why the petitioner died due to electrocution. It is a clear prima facie negligence or careless act on the part of the employees under the respondents. The care and caution that may be taken in those circumstances have not been taken by the employees of the respondent-corporation. It is not specifically stated in the counter affidavit that the Lineman and the Line Inspector who has switched on the power supply have taken all reasonable precautions and care and caution in switching on the electric supply. The preliminary accident report clearly indicates that while the deceased was attending to the electric work on the pole, the employees of the respondent-corporation must have negligently switched on the power supply. Under these circumstances, there is a tortuous liability on the part of the employees of the respondent-corporation in switching on the power supply. There are no disputed questions of fact involved in this case. It is only that the allegations in the affidavit are denied. As to under what circumstances the employees of the respondent-corporation switched on the power supply while a person was attending to the work on the pole have not been stated. Though he may not be a regular employee of the department, the fact remains that he was working with the respondent-corporation right from the year 1979 as a casual labour. As a casual labour, he has to attend to the electric works and repairs on the poles. Therefore, there is a clear infringement of Article 21 of the Constitution of India and hence the petitioners are entitled for compensation.

The deceased was aged about 36 years at the time of incident. He was having wife and 5 minor children who are independently depending upon the earnings of the deceased. Admittedly an amount of Rs.20,000/- was paid to the 1st petitioner as ex gratia. The deceased was the only earning member of the entire family and on his earnings only the entire family was being maintained. Since it is a gross prima facie negligence on the part of the respondents, it is reasonable to award an amount of

Rs.1,00,000/- (Rupees One lakh only) towards compensation. This is in addition to the ex gratia amount paid by the respondents. Such remedy in addition to the remedy in tort in a private law is left open.

The writ petition is allowed accordingly.

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K.C. Bhanu, J.

Date: 28--06—2005.

MVB.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble HACJ, Bilal Nazki on this Tuesday the Twenty eight of June Two thousand and five.

To

1. The Chairman Cum Managing Director,

C.P.D.C.L. (Central Power Distribution Company Limited)

Singareni Bhavan, Nampally, Hyderabad. A.P.

2. The Director (Operations)

C.P.D.C.L. (Central Power Distribution Company Limited)

Singareni Bhavan, Nampally, Hyderabad. A.P.

3. The Superintending Engineer (Operation)

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Mahaboobnagar, Mahaboobnagar District, A.P.

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